AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 8: The New Deal/Great Society Era—Criminal Justice/Juries and Lawyers/Juries

Norris v. Alabama, 294 U.S. 587 (1935)

Clarence Norris was one of the Scottsboro boys whose convictions for rape were reversed in Powell v. Alabama *(1932).*[1] *At his retrial, Norris made a motion to quash the grand jury indictment in Jackson County, Alabama, and the jury pool in Morgan County, Alabama, where his trial was being held, on the ground that the persons choosing the grand and petit juries engaged in racial discrimination. The trial judge rejected this claim and Norris was again sentenced to death. The Supreme Court of Alabama affirmed the trial court ruling. Norris appealed to the Supreme Court of the United States.*

The Supreme Court by a unanimous vote declared that Norris was unconstitutionally convicted. Chief Justice Hughes's opinion maintained that overwhelming evidence existed of race discrimination in the jury selection process. Hughes treated Norris *as a straightforward application of longstanding precedent. Reread some of the cases on criminal justice in the Republican Era. Do you agree that* Norris *would have won his case in 1890 or 1910? If not, consider two possible differences. First, justices in 1935 were more likely to find racial discrimination than justices in previous eras. Second, victims of racial discrimination in 1935 were more likely to have appellate lawyers who could make the case that their constitutional rights had been violated.*

CHIEF JUSTICE HUGHES delivered the opinion of the Court.

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There is no controversy as to the constitutional principle involved. . . . 'Whenever by any action of a state, whether through its Legislature, through its courts, or through its executive or administrative officers, all persons of the African race are excluded, solely because of their race or color, from serving as grand jurors in the criminal prosecution of a person of the African race, the equal protection of the laws is denied to him, contrary to the Fourteenth Amendment of the Constitution of the United States.' . . . The principle is equally applicable to a similar exclusion of negroes from service on petit juries. . . .

. . . When a federal right has been specially set up and claimed in a state court, it is our province to inquire not merely whether it was denied in express terms but also whether it was denied in substance and effect. If this requires an examination of evidence, that examination must be made. Otherwise, review by this Court would fail of its purpose in safeguarding constitutional rights. . . .

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Defendant adduced evidence to support the charge of unconstitutional discrimination in the actual administration of the statute in Jackson county. The testimony, as the state court said, tended to show that 'in a long number of years no negro had been called for jury service in that county.' . . . Testimony to that effect was given by men whose ages ran from fifty to seventy-six years. Their testimony was uncontradicted. It was supported by the testimony of officials. The clerk of the jury commission and the clerk of the circuit court had never known of a negro serving on a grand jury in Jackson county. . . .

That testimony in itself made out a prima facie case of the denial of the equal protection which the Constitution guarantees. . . . The case thus made was supplemented by direct testimony that specified

[1] For the details of the events that led to the conviction, see the discussion of *Powell v. Alabama* (1932) in *American Constitutionalism: Rights and Liberties*, Chapter VII.

negroes, thirty or more in number, were qualified for jury service. Among these were negroes who were members of school boards, or trustees, of colored schools, and property owners and householders. . . .

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We are of the opinion that the evidence required a different result from that reached in the state court. We think that the evidence that for a generation or longer no negro had been called for service on any jury in Jackson county, that there were negroes qualified for jury service, that according to the practice of the jury commission their names would normally appear on the preliminary list of male citizens of the requisite age but that no names of negroes were placed on the jury roll, and the testimony with respect to the lack of appropriate consideration of the qualifications of negroes, established the discrimination which the Constitution forbids. The motion to quash the indictment upon that ground should have been granted.

[Chief Justice Hughes then turned to the Morgan County trial jury.]

Within the memory of witnesses, long resident there, no negro had ever served on a jury in [Morgan] county or had been called for such service. . . . A clerk of the circuit court, who had resided in the county for thirty years, and who had been in office for over four years, testified that during his official term approximately 2,500 persons had been called for jury service and that not one of them was a negro; that he did not recall 'ever seeing any single person of the colored race serve on any jury in Morgan County.'

There was abundant evidence that there were a large number of negroes in the county who were qualified for jury service. Men of intelligence, some of whom were college graduates, testified to long lists (said to contain nearly 200 names) of such qualified negroes, including many business men, owners of real property and householders. . . .

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We think that this evidence failed to rebut the strong prima facie case which defendant had made. That showing as to the long-continued exclusion of negroes from jury service, and as to the many negroes qualified for that service, could not be met by mere generalities. If, in the presence of such testimony as defendant adduced, the mere general assertions by officials of their performance of duty were to be accepted as in adequate justification for the complete exclusion of negroes from jury service, the constitutional provision—adopted with special reference to their protection—would be but a vain and illusory requirement. The general attitude of the jury commissioner is shown by the following extract from his testimony: 'I do not know of any negro in Morgan County over twenty-one and under sixty-five who is generally reputed to be honest and intelligent and who is esteemed in the community for his integrity, good character and sound judgment, who is not an habitual drunkard, who isn't afflicted with a permanent disease or physical weakness which would render him unfit to discharge the duties of a juror, and who can read English, and who has never been convicted of a crime involving moral turpitude.' In the light of the testimony given by defendant's witnesses, we find it impossible to accept such a sweeping characterization of the lack of qualifications of negroes in Morgan county. It is so sweeping, and so contrary to the evidence as to the many qualified negroes, that it destroys the intended effect of the commissioner's testimony.